

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

JERRY D. CRISP & LINDA)
THORGERSEN,) DOCKET NO.: PT-2003-98
Appellants,) **NUNC PRO TUNC ORDER**
-vs-) FACTUAL BACKGROUND,
THE DEPARTMENT OF REVENUE) CONCLUSIONS OF LAW,
OF THE STATE OF MONTANA,) ORDER and OPPORTUNITY
Respondent.) FOR JUDICIAL REVIEW

The above-entitled appeal was heard on September 28, 2004, in Bozeman, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (Board). The notice of the hearing was duly given as required by law. Taxpayer, Jerry Crisp and taxpayer representative, Bob Heidecker, presented testimony in support of the appeal (Taxpayers). The Department of Revenue (DOR), represented by Appraisers Lonnie Crawford and John Elliott, presented evidence and testimony in opposition to the appeal.

The duty of this Board is to determine the appropriate market value for the property based on a preponderance of the evidence. Testimony was taken from both the Taxpayer

and the Department of Revenue, and exhibits from both parties were received.

The Board modifies the decision of the Gallatin County Tax Appeal Board.

FACTUAL BACKGROUND

1. Due, proper, and sufficient notice was given of this matter, the hearing hereon, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.
2. The subject property is residential in character and described as follows:

Lot 6020, Bridger Lake Meadows, Phase II, Plat J-202, Bozeman, Montana, Gallatin County, State of Montana. Street Address of 6020 Bridger Lake Drive, (Assessor ID #: RFG34238).
3. For tax year 2003, the Department of Revenue appraised the subject property at \$58,986 for the land and \$793,570 for the improvements.
4. The Taxpayer filed an appeal with the Gallatin County Tax Appeal Board on December 22, 2003, requesting a total property value of \$508,000.
5. In its February 12, 2004 decision, the county board denied any reduction in value.

6. The Taxpayer then appealed that decision to this Board on February 19, 2004, citing the following reason for appeal:

The DOR's cost basis analysis overestimated the value of this house.

TAXPAYER' S CONTENTIONS

The Taxpayer asserts that the correct value for the property, land and improvements, is \$570,000.

Taxpayer exhibit A is a graph that illustrates various value indications for years 1990 through 2002. These numbers are depicted on exhibits C through L.

Exhibit C illustrates the average price for homes in and around Bozeman from 1994 to 2004.

Exhibit D is the property record card (PRC) for year 1990. This document indicates a value for the improvements of \$314,905 as determined by the County Tax Appeal Board.

Exhibit E is a copy of an AB-26 Property Review Form dated November 7, 1995. Subsequent to the filing of this form, the DOR reduced the value of the improvements to \$340,220.

Exhibit F is one page of a "Buy-Sell Agreement" dated June 17, 1995 for the subject property. The agreed purchase price was \$350,000.

Exhibit G is a "Good Faith Estimate" for the subject property. The sales price was \$375,000.

Exhibit H is page 2 of an independent fee appraisal dated July 15, 1997. The value as determined by the appraiser was \$400,000.

Exhibit I is a copy of the 1999 assessment notice for the subject property. The value indicated on the document for the appraisal cycle was \$400,000.

Exhibit J is a copy of an independent fee appraisal dated 22, 1998. The value as determined by the appraiser was \$450,000.

Exhibit K is a copy of an independent fee appraisal dated September 17, 2002. The value as determined by the appraiser was \$570,000.

Exhibit L is a copy of the revised 2003 assessment notice for the subject property. The value indication is \$852,556.

The Taxpayer does not dispute the fact that property values in Bozeman have escalated, but he does not believe they have increased to a level as asserted by the DOR. Therefore, based on exhibit K, \$570,000 is the best indication of value.

DOR'S CONTENTIONS

DOR exhibit #1 is a copy of the Taxpayer's 2003 AB-26 Property Review Form. Pursuant to the filing of this request for review, the DOR reduced the quality grade of the home from an 8+ to an 8. The total value indication went from \$929,716 to \$852,556. Additional pages consist of a property record card, a map illustrating the subject subdivision, and a plat map depicting the subject lot.

DOR Exhibit #2 consists of four pages from the Taxpayer's 2002 fee appraisal and one page from the Marshall Swift Residential Cost Manual. It is the DOR's position that the sales selected by the appraiser, and used to arrive at a value indication, are not truly comparable. It's the DOR's opinion that the comparables selected are, for the most part, inferior to the subject as illustrated by the photographs. It is the position of the DOR that a \$30.00 per square foot adjustment for the difference in gross living area is significantly understated. This is evident when looking at the cost approach, where the appraiser's base cost per square foot is \$82.11. It's the DOR's position that the fee appraisal understates that market value for the subject.

DOR exhibit 3 is the DOR's cost approach reconstruction recognizing Marshall Swift and the data within the fee appraisal. The value indication illustrated on this exhibit is \$771,958.

It's the opinion of the DOR that the best indication of value is \$852,566, as determined by the cost approach to value.

BOARD'S DISCUSSION

Whether it was through a sale, fee appraisal, or statewide reappraisal, there have been a significant number of indications of value for the subject property from 1990 to present. The following table illustrates the market value indications and the approximate changes in value expressed in percentages:

Purpose	Value	% Increase/ Decrease	% Increase Per Month Approx.	Comparing
1990 tax appeal value (Ex. D)	\$314,904			
1995 DOR appraisal (Ex. E)	\$340,000	8.0%	.13%	Ex. D to Ex. E
June 1995 Purchase (Ex. F)	\$350,000	3.0%	.6%	Ex. E to Ex. F
July 1997 Fee appraisal (Ex. H)	\$400,000	14%	.6%	Ex. F to Ex. H
August 1997 Purchase (Ex. G)	\$375,000			
1997 DOR appraisal (Ex. I)	\$400,000			
October 1998 Fee appraisal (Ex. J)	\$450,000	12.5%	.6%	Ex. I to Ex. J
September 2002 Fee appraisal (Ex. K)	\$570,000	27%	.6%	Ex. J to Ex. K
2003 DOR appraisal (Ex. L)	\$852,556	50%	17%	Ex. K to Ex. L

The DOR testified that the comparables used by the fee appraiser are not comparable to the subject due to the

basic description, overall size, and dollar adjustments. The DOR testified that it also appraised the property by means of the sales comparison approach. The DOR testified that the sales selected by the Computer Assisted Mass Appraisal System (CAMAS) were deemed to be not comparable. Because CAMAS only selected three properties and the adjustments were so significant the DOR deferred to the cost approach to value.

The DOR reconstructed the fee appraiser's cost approach based upon its own information as illustrated in exhibit #3. Summarized, the cost approaches from the fee appraisal, the DOR reconstructed approach, and the DOR's approach indicates the following:

	Fee Appraisal (Ex. K)		DOR Reconstruction (Ex. 3)		DOR Appraisal
Land Value		\$100,000		\$100,000	\$58,986
Total Estimated Cost New of Improvements	\$494,504		\$639,838		\$648,650
Physical Depreciation	<u>\$39,560</u>	8%	\$70,382	11%	Calculated Below
Depreciated Value of Improvements	\$454,944		\$569,456		Calculated Below
Site Improvements	<u>\$20,000</u>		Included Above		Included Above
Total Value of all Improvements	\$474,944		\$569,456		Calculated Below
Current Cost Index	Included Above		Included Above		1.08%
Percent Good - Physical Depreciation	Calculated Above		Calculated Above		96% 4%
Economic Condition Factor	NA		1.18%		1.18%
Total Value of all Improvements		<u>\$474,944</u>		<u>\$671,958</u>	<u>\$793,570</u>
Total Cost Approach Value	Rounded	\$575,000		\$771,958	\$852,556

If the DOR's reconstruction of the cost approach, exhibit #3, is any indication of value, it suggests that the DOR has over appraised the subject property by \$80,598.

It is true, as a general rule, that the appraisal of the Department of Revenue appraisal is presumed to be correct and that the taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967). The DOR did not value the property by means of the sales comparison approach because the computer selected non-comparable properties. The income approach is not a valid appraisal method for this residential property because it is non-income producing. Therefore, the DOR must look to the cost approach. The DOR arrived at a value of \$58,986 for the land. The valuation of the land is not at issue before the Board. Within the DOR's cost approach to value is the application of an economic condition factor (ECF). In this case, the DOR applied an ECF of 118%. In *Albright V State of Montana*, 281 Mont. 196, 1997, the Court upheld the application of an ECF. The Court said, An "Economic Condition Factor" (ECF) is defined by the Department's CAMAS users' manual as "extraordinary economic obsolescence that impacts all property located in a

specific neighborhood, community, or geographic area."

(emphasis added). The DOR testified that the 118% ECF is for neighborhood #3. Neighborhood #3 encompasses all of the rural area surrounding Bozeman. The DOR testified that every sale within the computer model was used in the development of the 118% ECF. The DOR also testified that this ECF was established from sales of quality "Grade 3" homes to quality "Grade 9" homes. This Board's concern with the application of a 118% ECF is that it is developed from sales. Both the fee appraiser and the DOR had difficulty in locating properties comparable to the subject. So to simply apply the 118% to this property is deemed to be inappropriate without sufficient market data.

The DOR's major criticism with the fee appraisal is that the appraiser only applied a \$30.00 per square foot adjustment for a difference in gross building area. In effect, the fee appraiser has determined that the size and amount of living space does not warrant a great deal valuation consideration. The following tables illustrate a price per square foot comparison:

Exhibit K - Fee Appraisal

		Sale Price	Gross Living Area	\$/SF
Sale #1	Unadjusted	\$585,000	3,035	\$193
	Adjusted	\$612,500	3,035	\$202
Sale #2	Unadjusted	\$530,000	3,816	\$139
	Adjusted	\$555,900	3,816	\$146
Sale #3	Unadjusted	\$510,000	3,954	\$129
	Adjusted	\$542,100	3,954	\$137
Sale #4	Unadjusted	\$505,000	3,300	\$153
	Adjusted	\$574,000	3,300	\$174
Sale #5	Unadjusted	\$565,000	4,480	\$126
	Adjusted	\$570,600	4,480	\$127
Average	Unadjusted			\$148
Average	Adjusted			\$157
Subject	With Land	\$570,000	5,433	\$105
	Without Land	\$470,000	5,434	\$86

DOR Appraisal

Subject	With Land	\$852,556	5,270	\$162
	Without Land	\$793,570	5,270	\$151

The subject property is undoubtedly larger than the comparables and economies of scale should be a consideration in building costs, but there is nothing to support a price per square foot of \$86.

It is the opinion of this Board that after reviewing all the evidence, the physical depreciation should reflect 11% or 89% good. In addition, the ECF should reflect 100%. Applying these adjustments to the DOR's cost approach, the value for the property is as follows:

Replacement Cost New	\$648,650	\$123.08
Local Index Multiplier	1.08	
Percent Good	0.89	
Economic Condition Factor	<u>1</u>	
Replacement Cost New Less Depreciation	\$623,482	\$118.31
Plus Land Value	<u>\$58,986</u>	\$0.99
Total Value	\$682,468	\$129.50

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CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. §15-2-301, MCA.
2. §15-8-111 MCA. Assessment - market value standard - exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.
3. Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967).
4. Albright V State of Montana, 281 Mont. 196, 1997
5. The appeal of the Taxpayer is hereby granted in part and denied in part and the decision of the Gallatin County Tax Appeal Board is modified.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Gallatin County by the local Department of Revenue office at the land value of \$58,986 for the land and \$623,482 for the improvements. The decision of the Gallatin County Tax Appeal Board is modified.

Dated this 17th day of November 2004.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

GREGORY A. THORNQUIST, Chairman

JERE ANN NELSON, Member

JOE R. ROBERTS, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 17th day of November, 2004, the foregoing **NUNC PRO TUNC** Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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